

Remarks

Reconsideration of this Application is respectfully requested. Applicants respectfully request entry of the amendments after final because they place the claims in better condition for appeal.

Upon entry of the foregoing amendment, claims 9-12, 14-17, 19, and 21-28 are pending in the application, with claims 9, 14, 22, 25, and 27 being the independent claims. These amendments are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Request to Correct Inventorship

The Examiner denied Applicants' Request to Correct Inventorship because "this issue has already been decided by the Board of Patent Appeals and Interferences in an interference proceeding." Office Action, p. 2. Applicants respectfully traverse the Examiner's denial. The claims at issue in the present application are not the same claims that were pending in the application involved in the interference. Thus, the issue of inventorship of the presently pending claims was not decided in the interference proceeding. Further, the Request to Correct Inventorship is consistent with the evidence provided in the interferences.

The Examiner did not raise the issue of interference estoppel under 35 C.F.R. § 1.658(c). According to 37 C.F.R. § 1.658(c), "[a] judgment in an interference settles all issues which (1) were raised in the interference, (2) could have been properly raised and decided in the interference by a motion under § 1.633 (a) through (d) and (f) through

(j) or § 1.634, and (3) could have been properly raised and decided in an additional interference under § 1.633(e)." In the present situation, Applicants assert that the claims pending in the present application are patentably distinct from the counts of the interferences. In particular, independent claims 9 and 14, for example, each recite a check valve disposed in the center section interposed between an oil suction port and the closed circuit of the center section. This feature was not recited in any of the interference counts. Independent claims 22 and 25, for example, recite a movable swash plate abutting against the pump piston, the movable swash plate being provided with a detent mechanism. This feature also was not recited in the interference counts. Independent claim 27 recites that the pump is located between the motor and the axles. This feature is shown in FIG. 15 of the present application and was not recited in the interference counts. Accordingly, because the issue of inventorship of the present claims could not have been properly raised and decided in the interferences, interference estoppel does not apply.

For the reasons set forth above, Applicants respectfully request that the Examiner reconsider the Request to Correct Inventorship.

Rejections under 35 U.S.C. § 102

Claims 9-12, 14-17, 19, and 21-28 were finally rejected under 35 U.S.C. § 102(f) because Applicants allegedly did not invent the claimed subject matter. Applicants filed a Request to Correct Inventorship to correct the inventorship in the pending claims. Upon granting of the Request to Correct Inventorship, the proper inventors will be named. As noted above, Applicants assert that the inventorship of the presently pending claims was not decided in the interferences, and thus Applicants are not estopped from

correcting inventorship *ex parte*. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Information Disclosure Statement

Applicants' Information Disclosure Statement complied with the Patent Rules. If Examiner still has not been able to locate the references, Applicants will submit them. The references should be available in the parent applications and the interference files.

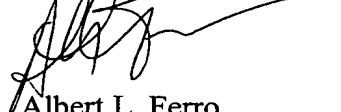
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully
requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Albert L. Ferro
Attorney for Applicants
Registration No. 44,679

Date: March 15, 2004

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

241369_1.DOC